

§ 134.206

13 CFR Ch. I (1–12 Edition)

unredacted decision under the protective order and then a redacted version for public release.

[75 FR 47440, Aug. 6, 2010]

§ 134.206 The answer or response.

(a)(1) Except in a case involving a petition appealing from an SBA determination, a respondent must file and serve an answer within 45 days after the filing of a petition or the service of an order to show cause, except that in debt collection cases, answers are due within 30 days.

(2) The answer must contain the following:

(i) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(ii) Any affirmative defenses; and

(iii) The name, address, telephone number, facsimile number, and signature of the respondent or its attorney.

(3) Allegations in the petition or order to show cause that are not answered in accordance with paragraph (a)(2)(i) of this section will be deemed admitted unless injustice would occur.

(b) *Appeal of an SBA determination.* (1) *Notice and order.* Upon the filing of an appeal petition, OHA will issue a notice and order informing all known parties of the appeal petition and the deadline for filing and serving any responses to the appeal. The SBA response is due 45 days after the date the appeal petition is filed, unless a rule governing the particular type of appeal provides a different deadline.

(2) *SBA response.* If SBA is the respondent, SBA need not admit or deny the allegations in the petition, but must set forth the relevant facts and the legal arguments in support of SBA's determination.

(3) *Administrative record.* If SBA is to file and serve an authenticated copy of the administrative record (or protest file), the notice and order will provide further instructions.

(4) *Claim of privilege.* If SBA asserts a claim of privilege over any portion of the administrative record, SBA must serve the petitioner a redacted version, accompanied by a "Vaughn Index" de-

scribing each withheld item and justifying each claim of privilege. SBA also must file an unredacted copy for *in camera* inspection by the Judge. The Judge will afford the petitioner an opportunity to object to the administrative record and to challenge any claim of privilege asserted by SBA.

(c) If a petition or order to show cause is amended or if respondent is not properly served, the Judge will order the time to file an answer or response extended and will specify the date such answer or response is due. If respondent is not properly served with a petition appealing from an SBA determination, the Judge will issue an order directing that the petitioner serve respondent within a specified time and directing respondent to file and serve a response within 45 days after petitioner timely serves respondent in accordance with the order.

(d) If the respondent fails to timely file and serve an answer or response, that failure will constitute a default. Following such a default, the Judge may prohibit the respondent from participating further in the case. If SBA, as respondent to a petition appealing from an SBA determination, fails to timely file and serve its response or the administrative record (where required), the Judge will issue an order directing SBA to file and serve the administrative record by a specified date.

(e) *Reply.* A reply to a response is not permitted unless the Judge, upon motion or on his or her own initiative, orders a reply to be filed and served. A party moving for leave to reply should file and serve the proposed reply with its motion.

[67 FR 47247, July 18, 2002, as amended at 75 FR 47440, Aug. 6, 2010]

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion (see § 134.211), and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of amendments to pleadings. However, an amendment will not be permitted if it would cause unreasonable delay in the determination of the matter. The proposed amendment